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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,419	12/02/2003	Scott E. Brient	028/006	6795
7590	09/03/2004			EXAMINER MAUST, TIMOTHY LEWIS
Scott E. Brient 625 Highlands Court Roswell, GA 30075			ART UNIT 3751	PAPER NUMBER

DATE MAILED: 09/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/726,419	BRIENT, SCOTT E.
	Examiner	Art Unit
	Timothy L Maust	3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 02 December 2003.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-79 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-79 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 02 December 2003 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/2/03.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 14, 15, 18-26, 28, 33-52, 56, 59, 60, 62-72 and 74 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown.

In regard to claim 1-5, 14, 18-26, 28, 33-35, 38, 40-44, 49-52, 56, 59, 60, 62-68, 73 and 74, the Brown reference discloses a condiment dispenser comprising a “housing” 14 and “injection nozzle” 17, as claimed. Further, the device is capable of delivering ketchup, cheese sauce and syrup to a French fry or toast stick in a “substantially automated manner”, as claimed.

In regard to claim 15, inasmuch structure that is defined by an “injection needle” the Brown device meets the claim limitation

In regard to claims 36, 39 and 66, the device is capable of piercing food with one nozzle then the other nozzle at different times.

In regard to claim 37, “injection nozzle” 17 is capable of piercing two food items at one time.

In regard to claims 45-48 and 69-72, the Brown device is configured to inject any percentage of condiment desired.

In regard to claims 27 and 61, the device is "configured" and capable of being pre-heated.

Claims 1-5, 14, 15, 18-26, 28, 33-52, 56, 59, 60, 62-72 and 74 are rejected under 35 U.S.C. 102(b) as being anticipated by Holec.

In regard to claim 1-5, 14, 18-26, 28, 33-35, 38, 40-44, 49-52, 56, 59, 60, 62-68, 73 and 74, the Holec reference discloses a condiment dispenser comprising a "housing" 10 and "injection nozzle" 13, as claimed. Further, the device is capable of delivering ketchup, cheese sauce and syrup to a French fry or toast stick in a "substantially automated manner", as claimed.

In regard to claim 15, inasmuch structure that is defined by an "injection needle" the Holec device meets the claim limitation

In regard to claims 36, 39 and 66, the device is capable of piercing food with one nozzle then the other nozzle at different times.

In regard to claim 37, "injection nozzle" 13 is capable of piercing two food items at one time.

In regard to claims 45-48 and 69-72, the Holec device is configured to inject any percentage of condiment desired.

In regard to claims 27 and 61, the device is "configured" and capable of being pre-heated.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-13, 16, 17, 53-55, 57, 58 and 75-79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown or Holec.

The Brown or Holec references disclose the invention substantially as claimed (discussed *supra*), but do not disclose the hole width in the food item being between 0.05 to 0.2 inches in diameter. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the injection nozzle in a range of sizes, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105

Claims 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holec.

In regard to claims 29-32, the Holec reference discloses the invention substantially as claimed, but does not disclose the use of a rectangular condiment packet. Examiner, however, takes Official Notice that these types of condiment packets are well known and readily used in restaurants. Further, the

Holec device is capable of drawing condiment from the packet in order to inject the liquid condiment into a food item, as claimed.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Kelly, Petersen and Townsend references pertain to various condiment injectors, similar to applicant's device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy L Maust whose telephone number is (703) 308-3390. The examiner can normally be reached on Tue. - Fri. 6:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (703) 308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3751

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Timothy L Maust  
Primary Examiner  
Art Unit 3751

Tlm  
8/30/04